

No. 91-633

Supreme Court, U.S.

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In the Supreme Court of the United States

OCTOBER TERM, 1991

PRINCIPAL FINANCIAL GROUP, a/k/a or d/b/a
PRINCIPAL MUTUAL LIFE INSURANCE Co.,
PETITIONER

v.

BARBARA CAROLINE THOMAS, RESPONDENT

On Petition for a Writ of Certiorari to the
Supreme Court of Alabama

REPLY BRIEF FOR THE PETITIONER

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Respondent's brief in opposition fails to come to grips with the crux of our petition for certiorari. She conspicuously does not contest the public importance or recurring nature of the excessiveness and fair-notice questions we have presented. Instead, she argues that (1) the former issue already has been resolved by this Court's decision in *Haslip*, and (2) the latter issue was waived below. Respondent's contentions are unavailing and cannot obscure the immediate need for this Court's guidance on the significant punitive-damages issues raised by this case.

I. THE CORRECT INTERPRETATION OF *HASLIP* PRESENTS AN IMPORTANT AND RECURRING LEGAL QUESTION ON WHICH THE LOWER COURTS ARE IN IMMEDIATE NEED OF THIS COURT'S GUIDANCE

Based on a fundamental misconception of our position, respondent asserts that *Haslip* has sufficiently resolved the constitutional excessiveness issue and that the Alabama Supreme Court's decision is too fact-bound to warrant this Court's review. Respondent is simply wrong in every respect.

To begin with, as we explained in both our reply memorandum at the stay stage (at 1-2) and in our petition (at 18), it is *not* our position, as respondent persists in contending (Br. in Opp. 11-15), that the Due Process Clause fixes an invariable maximum ratio of punitive damages to compensatory damages and that any award above that figure automatically violates the Constitution. Rather, we submit that, as this Court expressly recognized in *Haslip*, the relationship between punitive and compensatory damages is a highly relevant factor to consider in the constitutional equation and that a gross disparity between the awards—such as the 750:1 ratio in this case—is a telling warning signal of unconstitutional excessiveness. See *Haslip*, 111 S. Ct. at 1045, 1046 (punitive damages must “have some understandable relationship to compensatory damages,” and the 4:1 ratio in that case was “close to the [constitutional] line”). Because virtually all of respondent's argument, including her treatment of the Alabama Supreme Court's punitive damages decisions, is thus aimed at an entirely erroneous conception of our position, her contentions are wholly beside the point.

In fact, contrary to her intended objective, respondent's brief in opposition actually reinforces the cert-worthiness of this case. First, she concedes (Br. in Opp. 7, 22), that under *Haslip* the United States Constitution imposes *substantive* limits on the size of a punitive damages award separate and apart from federal *procedural* requirements. Significantly, however, respondent nowhere offers a legal interpretation of *Haslip* or sets out a legal standard of excessiveness; instead, she contents herself with the repeated refrain (Br. in Opp. 1-2 & n.1, 7, 22) of broad deference to the excessiveness determinations of the state courts.

Second, in quoting *Eichenseer v. Reserve Life Ins. Co.*, 934 F.2d 1377, 1382 (5th Cir. 1991), respondent acknowledges that "[t]he size of an award of punitive damages and the relationship between the award and the amount of compensatory damages are relevant factors in determining whether the award is constitutional" (Br. in Opp. 15); under that standard, moreover, "[p]erhaps in some cases—even in many cases—an award of punitive damages that is five hundred times the amount of the compensatory damages will violate due process." *Id.* at 16. The Fifth Circuit's reasoning is squarely incompatible with the decision of the Alabama Supreme Court in this case and confirms the divergence of lower courts' approaches to the excessiveness issue. See Pet. 13-14. Indeed, the concurring justices below (see Pet. 9-10, 13) and other courts have totally eschewed *any* proportionality analysis, despite this Court's injunction in *Haslip* that there must be a rational relationship between the compensatory and punitive awards. *Ibid.*; see also *Hospital Auth. v. Jones*, 1991 Ga. LEXIS 815 at *3-*4 (Oct. 18, 1991).

Third, respondent's brief in opposition makes clear (at 13-14, 18-19 n.6) that the excessiveness issue has arisen with great frequency in Alabama (and elsewhere) and that the Alabama Supreme Court has conclusively come to rest on its reading of *Haslip*. For the reasons fully stated in the petition (at 17-23), we submit that the interpretation of the Alabama Supreme Court (like that of a number of other courts) is legally incorrect and threatens serious economic injury to businesses, consumers, and the international competitive standing of our nation. If we rather than respondent and the Alabama Supreme Court are correct in our understanding of *Haslip*, there is an imperative need for this Court to clarify the law *now*.

Against all this, respondent's only rejoinder is that the Alabama Supreme Court's decision turned on the particular facts of this case and therefore does not present any issue of general importance. In some sense, of course, all excessiveness claims can be said to depend upon the factual context in which they arise. That does not mean, however, that the explication of the governing constitutional standard does not present a legal issue that can and should be resolved by this Court. Simply put, if we are right on the law, the judgment below cannot be saved on the facts because the Alabama Supreme Court did not—and could not—articulate any rational basis for the penalty in this case. What is more, since *Haslip* ultimately upheld the punitive damages award in that case, application of the constitutional standard to strike down the award here on grounds of excessiveness would provide lower courts with a critically needed point of reference for future cases.

Furthermore, in pitching her position on the factual record in this case, respondent presents a highly selec-

tive and misleading version of the relevant facts and their relation to the Alabama Supreme Court's ruling. For example, she attempts to suggest that the enormous punitive award in this case rested on "‘a pattern or practice [by petitioner] of refusing to pay any borderline claims involving small amounts.’" Br. in Opp. 18, quoting Pet. App. 3a. In fact, however, the Alabama Supreme Court explicitly stated that "there is *no* evidence of [any such pattern or practice] in this case." Pet. App. 3a (emphasis added). Likewise, it is undisputed that petitioner accurately disclosed to respondent its reasons for denying her claim; that it reconsidered the denial upon respondent's request; and that in construing the policy on a question of first impression under Alabama law, it reached a result that respondent's employer agreed was correct and accords with all of the judicial decisions in other states interpreting similar policy language. On this record, a proper reading of *Haslip* plainly does not permit the exorbitant award of punitive damages that the Alabama Supreme Court sustained.

As this case illustrates, the succession of mammoth punitive damages awards continues apace after *Haslip*. See Pet. 14; see also, *e.g.*, *Proctor v. Davis & Upjohn Co.*, No. 82-L3213 (Ill. Cir. Ct. Cook Cty. Oct. 8, 1991) (punitive damages award of \$124 million; total jury verdict of \$127 million); ACLI Am. Br. 13 (citing cases). The Alabama Supreme Court's holding effectively vitiates *Haslip* as a meaningful restraint on massive punitive awards. Indeed, neither the Alabama Supreme Court nor respondent has offered a *single* rational reason to justify the disproportionate award in this case. If this award complies with the Constitution, then *Haslip* is a chimera and the sky's the limit on punitive damages judgments

against corporations. *Haslip* establishes, however, that that is not and cannot be the law. It is of the utmost importance to our legal system and our economy both that lower courts have clear guidance on the controlling constitutional standard and that they be required to adhere to that standard not only in word but in substance. This Court's further review of the excessiveness issue is essential to ensure the proper operation of the punitive damages system.

II. THE FAIR-NOTICE ISSUE IS PROPERLY BEFORE THE COURT AND WARRANTS REVIEW

Respondent nowhere disputes either our legal analysis of the fair-notice question or the importance of that issue. Instead, her main contention (Br. in Opp. 8-9) is that petitioner waived this issue by failing to raise it below.¹ This procedural argument is utterly without merit and provides no reason for this Court to deny review of what respondent accepts as a cert-worthy issue.

¹ Respondent also attempts to suggest (Br. in Opp. 2-5) that petitioner did in fact have adequate notice that its conduct could lead to punitive damages because it did not investigate the claim fully and because it failed to subject the relevant facts to "cognitive evaluation." But the "facts" that supposedly were not investigated or considered were legally irrelevant under petitioner's interpretation of the policy—an interpretation that has been sustained by every court to consider the question. Before the Alabama Supreme Court effected its "change[] [in] the rules" (Pet. App. 12a (dissenting opinion)), petitioner had no reason to believe those facts were relevant and therefore no reason to investigate or consider them. The Alabama Supreme Court's decision subjecting petitioner to punitive damages thus rests entirely on petitioner's failure to act in accordance with a legal rule that was not established until long after the conduct in question. That retroactive imposition of punishment for previously unproscribed conduct clearly violates the fair-notice principle.

As noted in our petition (at 27 n.10), this issue was properly preserved below. Petitioner specifically raised this claim before the trial court in its Motion for a New Trial after the remand from the Alabama Supreme Court (CR 3, at 3), and it renewed the point at oral argument on that motion (CR 116-117). In addition, petitioner fully briefed the question in the Alabama Supreme Court (Br. 25, 42-44).

Respondent concedes all this. See Br. in Opp. 8. She contends (*id.* at 8 n.3), however, that petitioner was obligated, upon pain of procedural default, to have raised the issue at an earlier stage. Contrary to respondent's contention, neither of the courts below gave even the slightest hint that they considered the argument waived and were therefore declining to consider it on the merits. On the contrary, the trial court did *not* grant respondent's motion to strike this claim and expressly disavowed any reliance on her waiver argument, instead reaching the merits and finding "no constitutional infirmity." Pet. App. 15a.²

Respondent's position that the argument should have been raised prior to trial simply makes no sense. The constitutional violation—retroactive imposition of punishment—did not occur until the Alabama Supreme Court issued its decision on the first appeal, as the dissenting judge below concluded (see Pet. App. 11a-12a). Petitioner surely was not required to anticipate that its action in accordance with the facially unambiguous language of the policy would be held to be grounds for an award of punitive damages.

² In addition, notwithstanding her vague allusions (Br. in Opp. 10), respondent points to no inadequacy in the factual record that resulted from the asserted waiver and would impair this Court's consideration of the fair-notice issue.

In these circumstances, petitioner's repeated arguments on the fair-notice issue in the trial court and the Alabama Supreme Court were timely and sufficient to preserve the question for review in this Court. To impose punitive damages for conduct that petitioner did not know—and could not have known—was wrongful is a blatant violation of due process and raises an issue that recurs in punitive damages cases with disturbing frequency. This Court's review is accordingly warranted.

CONCLUSION

For the foregoing reasons and those stated in our petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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